

overcome

Claims Rejections-35 USC s 103

The last Office Action (O. A.) quoted 35 U.S.C. 103(a) as the basis for rejection of claims 1 and 3 as being unpatentable over Tsujioka in view of Edmark (U.S. Pat # 5,036,870). Specifically the O. A. states

“With regard to claims 1 and 3, Tsujioka’s hairstyling tool (fig. 8) for the weaving of natural hair comprising an elongated needle shaft (3) having first and second ends, said end defining a probe portion (3a, fig. 1), an oval intermediate portion (7 a, fig. 8), and an elongated terminal portion (7 b, fig 8) significantly reduced in width relative to the intermediate portion.

Tsujioka **does not show** (emphasis added) the needle having a cylindrical shape, however Edmark discloses a hairstyling tool (fig. 1) comprising an elongated cylindrical needle shaft (12, abstract, lines 2-3).”

Tsujioka claims describe the flexible invention as having an **elastic loop** (claim 1), made of **rubber** at least (claim 4), and the implement being **flat** (claim 5). Tsujioka further discloses an embodiment (fig. 8) described as having a **convex ring** (7 b fig. 8) for home-non professional use. Tsujioka states uses for the invention as a **paper knife, ear pick or scissors** (Detailed Description paragraph 0015).

The latest O. A. also references Edmark (U.S. Pat. # 5,036,870) as comprising an elongated cylindrical needle shaft being made of a **semi rigid, flexible distort able material also designed for home-non professional use**. Edmark’s invention has a “loop formed of resilient material which allows it to deform.”

Tsujioka and Edmark Do Not Contain Any Justification to support Their Combination, Much Less in the Manner Proposed. With regard to the proposed combination of Edmark and Tsujioka in order for any prior-art references themselves be validly combined for use in a prior-art rejection, the references themselves must suggest they be combined In re Sernaker, 217 U.S.P.Q. 1,6 (C.A.F.C. 1983):

“Prior art references in combination do not make an invention obvious unless something in the prior art references would suggest the advantages to be derived from combining their teachings.”

Tsujioka’s invention disclosed as a paper knife and scissors. Scissors and paper knives are traditionally flat as depicted in Tsujioka application (fig. 1). Thus there is **no** benefit in combining Tsujioka and Edmark to create a cylindrical paper knife or scissors.

Uniroyal, Inc v. Ruskin-Wiley Corp., 5U.S.P.Q. 2d 1434 (C.A.F.C. 1988 states “ where prior art references require selective combination by the court to render obvious a subsequent invention, there must be some reason for the combination other than hindsight gleaned from the invention itself....Something in the prior art must suggest the desirability and thus the obviousness of making the combination.

The rejection of claim 2 overcome in regards to Edmark

The latest O. A. States the rejection of claims 2 in regards to Applicant’s entire invention’s construction material being rigid and nondeformable. Out of the 6 references cited- Edmark, Tsujioka, Skinner, Caranicas, Armstrong, Stimson, and Lawrence- against the applicant, with three being ponytail looping devices, **not one** invention was cited that employed the use of

an entirely non deformable or a non flexible material used in their fabrication to form intricate multi-loops in African kinky textured hair. In an already crowded field an individual of ordinary skill would have stated, marketed, or taught the use of a non flexible entirely rigid ponytail looping device. No such material was presented in this O. A. Furthermore no invention cited disclosed any information in regards to sterilization or germ transference as disclosed in Applicants Amendment B Exhibits A, B, and F.

A critical feature of the Tsujioka and Edmark inventions is it's ability to distort or converge bringing the large ponytail hair sections together and squeezing the hair section and tool into a smaller confined space performing one loop styles. All references cited employ the flexible loop without any reference, teaching or hint of a rigid material as found in applicant's invention. Ex parte Levengood, 28 U.S.P.Q. 2d 1300 (P.T.O.B.A.&I. 1993) states:

"In order to establish a prima facie case of obviousness, it is necessary for the examiner to present evidence, preferably in the form of some teaching, suggestion, incentive or inference in the applied art, or in the form of generally available knowledge, that one having ordinary skill in the art would have been lead to combine the relevant teachings of the applied references in the proposed manner to arrive at the claimed invention.... Accordingly, an examiner cannot establish obviousness by locating references which describe various aspects of a patent applicant's invention without providing evidence of the motivating force which would impel one skilled in the art to do what the patent applicant has done."

The rejection of claim 4 Edmark overcome

Claims Rejections-35 USC s 103

The last Office Action (O.A.) quoted 35 U.S.C. 103(a) as the basis for rejection of claims 4 as being unpatentable over Tsujioka in view of Lawrence(U.S. Pat # 5,289,834)). Specifically the O. A. states “It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the rounded terminal end of the probe as taught by Lawrence into the tool of Tsujioka for the purpose of guiding through the hair of the user without hurting the scalp.” Tsujioka discloses the opposite stating in paragraph 0009(Example) “In addition, since the hair run through -hole section 2 has elasticity, when extracting from hair, when loop shape bends long and slender, while it can let hair pass smoothly, and sensing painfulness for the hair or hurting one’s hair, after use returns to the original condition.”

Tsujioka’s discloses an invention with a pointed end that has alternate uses as scissors or paper knife. The rounded terminal end as depicted by Lawrence is inadequate in performing the same function disclosed by the Tsujioka. Therefore **Tsujioka and Lawrence Do Not Contain Any Justification to support Their Combination, Much Less in the Manner Proposed.** With regard to the proposed combination of Lawrence and Tsujioka in order for any prior-art references themselves be validly combined for use in a prior-art rejection, the references themselves must suggest they be combined In re Sernaker, 217 U.S.P.Q. 1,6 (C.A.F.C. 1983).

Claims rejection 4 overcome in regards to Tsujioka

The O. A. also rejected claim 4 as it states **Tsujioka’s flexible, deforming convex crown** was capable of pinching or holding the hair securely for multiple looping of intricate weaving patters. There is **no disclosure** as to the benefits or uses of the **convex** ring (7 b fig. 8) as pictured in Tsujioka application. There is no description other than to describe it as a convex

ring in relation to its medial potion. There is no mention as to Tsujioka's convex crown holding or securing ponytail sections while looping the hair.

No evidence was cited or taught of general skill in regards to Applicant's elongated pinch (14 fig 1) which secures hair while performing intricate looping patterns in straight to African Kinky hair types.

Ex parte Levengood, 28 U.S.P.Q. 2d 13000 (P.T.O. B.A. &I. 1993 states "In order to state a prima facie case of obviousness, it is necessary for the examiner to present evidence, preferably in the form of some teaching, suggestion, incentive or inference in the applied art, or in the form of generally available knowledge, that one having ordinary skill in the art would have been led to combine the relevant teachings of the applied references in the proposed manner to arrive at the claimed invention...That one can reconstruct and /or explain the theoretical mechanism of an invention by means of logic, and sound scientific reasoning does not afford the basis for an obvious conclusion...Accordingly an examiner cannot establish obviousness by locating references which describe various aspects of a patent applicant's invention without also providing evidence of the motivating force which would impel one skilled in the art to do what the patent applicant has done."

CONCLUSION

For all of the above reasons, applicant submits that the specification and claims are now in proper form and all claims define patent ability over the prior art. Applicant's invention is **entirely rigid** as shown in Amendment B Exhibit F, non deforming, has an elongated pinch

which secures all hair types, reduces germ transference due to it's ability to be sterilized
(Amendment B Exhibits A and B and Description of preferred Embodiments paragraph 0027),
has a rounded end, is designed to perform intricate multiple looping hair weaving patterns.
Therefore Applicant submit this application is now in condition for allowance, which action we
now respectfully submit.

If for any reason this application is not believed to be in full condition for allowance,
applicant respectfully request the constructive assistance and suggestions of the Examiner
pursuant to M.P.E.P. s 2173.02 and s 707.07 (f) in order that the applicant can place this
application in allowable condition as soon as possible and without need for further proceedings.

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Very respectfully,



Debra Belton

Applicant Pro Se

15183 Chamisal

Chesterfield, MO 63017

636-728-0191